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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/710,590	07/22/2004	Steve Hansen	6467-0401	4589
24936	7590	01/18/2007	EXAMINER	
RALPH D CHABOT			LE, MARK T	
2310 E PONDEROSA DR				
SUITE 4			ART UNIT	PAPER NUMBER
CAMARILLO, CA 93010			3617	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/710,590	Applicant(s) HANSEN, STEVE	
	Examiner Mark T. Le	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to Applicant's papers filed on September 26, 2006. Applicant's arguments have been carefully considered.
2. Claims 1, 3, 5, and 7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 2 and 6-7 of prior Patent No. 6,766,963 in view of Jury (US 6,262,175).

The crosstie, defined in claims 1, 2 and 6-7 of the prior patent '963, includes features similar to that recited in instant claims 1, 3, 5 and 7.

Regarding the instant claimed strength enhancing polymer being limited to no more than 5% by weight, as recited in instant claim 1, it is noted that the strength enhancing polymer as recited in the prior patent claim 1 is between 0-.5%, which is less than 5%. Further in Jury, various other percentage levels of strength enhancing polymer (vinyl polymer), some of which are less than 5% and some are more than 5%, are suggested. According to the suggestions or implications from both the prior patent and Jury, it is clear that it was within the realm of one skilled in the art to select a desired percentage level of strength enhancing polymer for use in a structural member so as to achieve a correspondingly expected structural integrity as a result thereof. Accordingly, it would have been obvious to one skilled in the art to limit the percentage level of strength enhancing polymer in the structure of the prior patent claims to no more than 5% so as to achieve a structure having the expected physical properties as a result thereof.

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3. Claims 1, 3, 5 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jury (US 6,262,175) in view of Marinelli (US 6,247,651).

Jury discloses a recycled rubber material having features similar to that recited in the instant claims, including 5-90% vulcanized rubber crumb, 2-30% uncured or natural rubber, and a strength enhancing polymer (vinyl polymer) at some suggested percentage levels of less than 5%. It is noted that Jury does not suggest the specific structures that his material may be used to make, such as to make railway crossties. However, the concept of using recycled rubber materials to make railway crossties is well known. Note for example Marinelli's reference, wherein, a recycled rubber material is used to make railway crossties because it is more durable and environmental friendly than the conventional wood material. In view of Marinelli, it would have been obvious to one skilled in the art who has an access to the recycled rubber compound of Jury, to use the same to also make railway crossties, as taught by Marinelli, so as to achieve the expected benefits thereof.

Regarding the instant claimed temperatures, it is noted that both compounds of Jury and Marinelli are worked within the instant claimed temperature range.

Regarding the instant claimed steps of the instant method claims, note that the method of producing the structure of Jury, as modified, inherently requires the method steps as recited in the instant method claims.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jury (US 6,262,175) in view of Marinelli (US 6,247,651), as applied to claims 1 and 8 above, and further in view of Oestmann (US 5,104,039).

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Regarding the instant claimed indentations, consider the plurality of indentations on the longitudinal sides of the crosstie of Oestmann. In view of Oestmann, it would have been obvious to one skilled in the art to provide a plurality of indentations, similar to that of Oestmann, on the longitudinal sides of the crosstie of Jury, as modified, so as to enhance traction between the crosstie and the railway bed to prevent undesired movements of the crosstie.

5. Claims 4, 6-7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jury (US 6,262,175) in view of Marinelli (US 6,247,651), as applied to claims 3 and 5, and further in view of Smith (US 6,021,958).

Regarding the instant claimed holes or indentations, consider the holes or indentations shown in Figures 1 and 2 of Smith. In view of Smith, it would have been obvious to one skilled in the art to provide holes or indentations, similar to that taught by Smith, in the structure of Jury, as modified, so as to enhance the locating of rails onto the structure and to facilitate the driving of spikes into the structure.

6. Regarding Applicant's arguments that the material of Marinelli is different from that being claimed, the examiner agrees. However, note that since Jury, the main reference, does not suggest the specific structures that his material may be used to make, it would have been obvious to one skilled in the art to turn to other references for a teaching of what to do with a similar material, which is a recycled rubber material. In the instant case, Marinelli clearly teaches the use of a recycled rubber material to make railroad crossties, and such railroad crossties made from such recycled rubber material would have much longer service life than the conventional wood material, and would be

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more friendly to the environment, as described in lines 50-55, column 1 of Marinelli.

Therefore, it is obvious that one skilled in the art would see Marinelli's teaching as a guide to make railroad crossties out of Jury's recycled rubber material so as to achieve the expected benefits thereof. Accordingly, the combination of Jury and Marinelli is clearly proper.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 571-272-6682. The examiner can normally be reached on Mon-Fri, between 9AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Mark T. Le
Primary Examiner
Art Unit 3617

mle
1/9/07